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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1883

Introduced by Assembly Member Skinner
(Coauthors: Assembly Members Ammiano, Buchanan, Chesbro,
Garcia, Gordon, and Ting)

February 19, 2014

An act to amend Sections 5898.12, 5898.24, 5898.28, 5898.30, and 5899.2 of, and to add Sections 5898.16 and 5898.33 to, the Streets and Highways Code, relating to public improvements.

LEGISLATIVE COUNSEL'S DIGEST

AB 1883, as amended, Skinner. Public improvements: contractual assessments.

Existing law, the Improvement Act of 1911 (Improvement Act), authorizes the legislative body of any public agency, as defined, to determine that it would be convenient, advantageous, and in the public interest to designate an area within the public agency, as specified, within which authorized public agency officials and property owners may enter into voluntary contractual assessments to finance the installation of distributed generation renewable energy sources or energy

or water efficiency improvements that are permanently fixed to real property, as specified.

Under existing law, for the purpose of financing the installation of distributed generation renewable energy sources pursuant to the Improvement Act, “permanently fixed” includes, but is not limited to, systems attached to a residential, commercial, industrial, agricultural, or other real property pursuant to a power purchase agreement or lease between the owner of the system and the owner of the assessed property, if the power purchase agreement or lease contains certain provisions, including, but not limited to, provisions intended to ensure that the property owner is guaranteed the electric power from the system for the length of the lien. One of the required provisions is that after installation, the power purchase agreement or lease is paid in full using the funds from the contractual assessment program.

The Mello-Roos Community Facilities Act of 1982 (Mello-Roos Act) authorizes the establishment of community facilities districts and the issuance of bonds and the levying of special taxes to finance various types of facilities and services within the district.

This bill would revise the information included in the power purchase agreement or lease to allow a system owner to include a specified covenant and warranty in its contract with the property owner, providing that the system will not be removed for the term of the contract. The bill would specifically authorize either full or partial payment for the power purchase agreement or lease to be made after installation of the system. *The bill would declare the intent of the Legislature that the program finance prepaid service contracts, as well as installation, of renewable energy sources and energy efficiency improvements.*

This bill would make various changes to the Improvement Act to achieve cost reductions and to achieve consistency with similar provisions of the Mello-Roos Act, including changes in recordation requirements and authorizing the financing of facilities in connection with the initial construction of a residential building that is being undertaken by the intended owner or occupant.

This bill would authorize a public agency to transfer, as defined, its right, title, and interest in any voluntary contractual assessments if bonds have not been issued in that regard, subject to an agreement identifying the specific period of time during which the transfer will be operative, not to exceed 3 years. The bill would state that this authorization shall not be construed to authorize the transferee to initiate and prosecute a foreclosure action resulting from a delinquency in the payment of the

voluntary contractual assessment, and that a foreclosure action remains the responsibility of the public agency which would retain the sole right to enforce its senior lien status.

This bill would revise various procedures pursuant to which a public agency is authorized to issue bonds under the Improvement Act, including authorizing the public agency to issue new bonds to refinance outstanding bonds payable from contractual assessments levied pursuant to the act, which may be subject to a variable interest rate, under certain circumstances. The bill would authorize a public agency owning property to levy a contractual assessment under the act against a leasehold or possessory interest in that property, as prescribed.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Energy efficiency, renewable energy, and water efficiency
- 4 upgrades to residential, commercial, industrial, and other properties
- 5 are integral to furthering the state's goals of reducing greenhouse
- 6 gas emissions, insulating the state from the impacts of dwindling
- 7 water resources, and helping Californians save money.
- 8 (b) Not-for-profit entities and other third parties are increasingly
- 9 important partners with local governments in funding Property
- 10 Assessed Clean Energy (PACE) upgrades.
- 11 (c) The closing costs associated with bond issuance can make
- 12 PACE financing for small projects cost-prohibitive.
- 13 (d) By pooling small to medium size PACE projects into one
- 14 bond, the closing costs for each project can be drastically reduced.
- 15 (e) In order for a third party to pool projects, it is necessary to
- 16 enable local governments to assign the revenue from a PACE
- 17 assessment to an investor prior to the issuance of a bond.
- 18 (f) The right to foreclose on delinquent voluntary assessments,
- 19 and the senior lien status of those assessments, should remain with
- 20 the local government.
- 21 SEC. 2. Section 5898.12 of the Streets and Highways Code is
- 22 amended to read:
- 23 5898.12. (a) It is the intent of the Legislature that this chapter
- 24 should be used to finance public improvements to lots or parcels

1 that are developed and where the costs and time delays involved
2 in creating an assessment district pursuant to other provisions of
3 this division or any other law would be prohibitively large relative
4 to the cost of the public improvements to be financed.

5 (b) It is also the intent of the Legislature that this chapter should
6 be used to finance the installation *or prepaid service contract, or*
7 *both*, of distributed generation renewable energy sources or energy
8 efficiency improvements that are permanently fixed to residential,
9 commercial, industrial, agricultural, or other real property.

10 (c) It is also the intent of the Legislature to address chronic
11 water needs throughout California by permitting voluntary
12 individual efforts to improve water efficiency. The Legislature
13 further intends that this chapter should be used to finance the
14 installation of water efficiency improvements that are permanently
15 fixed to residential, commercial, industrial, agricultural, or other
16 real property, including, but not limited to, recycled water
17 connections, synthetic turf, cisterns for stormwater recovery, and
18 permeable pavement.

19 (d) It is also the intent of the Legislature that a public agency
20 in the process of establishing an assessment program, to the extent
21 feasible, use a good faith effort to provide advance notice of the
22 proposed program to water and electric service providers in the
23 relevant service area, as set forth in Section 5898.24, to allow the
24 most efficient coordination and collaboration between the public
25 agency and water and electric service providers.

26 (e) This chapter shall not be used to finance facilities for parcels
27 in connection with the initial construction of a residential building,
28 unless the initial construction is undertaken by the intended owner
29 or occupant.

30 (f) This chapter shall not be used to finance the purchase or
31 installation of appliances that are not permanently fixed to
32 residential, commercial, industrial, agricultural, or other real
33 property.

34 (g) Assessments may be levied pursuant to this chapter only
35 with the free and willing consent of the owner of each lot or parcel
36 on which an assessment is levied at the time the assessment is
37 levied.

38 SEC. 3. Section 5898.16 is added to the Streets and Highways
39 Code, to read:

1 5898.16. All references to financing in this chapter shall be
2 deemed to also refer to refinancing, except that with respect to
3 refinancing, the legislative body shall conclude that providing the
4 refinancing will result in an increased adoption of the
5 improvements authorized to be financed by this chapter. This
6 section does not constitute a change in, but is declaratory and a
7 clarification of existing law.

8 SEC. 4. Section 5898.24 of the Streets and Highways Code is
9 amended to read:

10 5898.24. (a) A legislative body shall publish notice of a hearing
11 pursuant to Section 6066 of the Government Code, and the first
12 publication shall occur not later than 20 days before the date of
13 the hearing.

14 (b) A legislative body shall provide written notice of a proposed
15 contractual assessment program to all water or electric providers
16 within the boundaries of the area within which voluntary
17 contractual assessments may be entered into not less than 60 days
18 prior to adoption of any resolution pursuant to Section 5898.26.

19 (c) (1) A legislative body administering a voluntary contractual
20 assessment program shall designate an office, department, or
21 bureau of the local agency that shall be responsible for annually
22 preparing the current roll of assessment obligations by assessor's
23 parcel number on property subject to a voluntary contractual
24 assessment.

25 (2) The designated office, department, or bureau shall establish
26 procedures to promptly respond to inquiries concerning current
27 and future estimated liability for a voluntary contractual
28 assessment. Neither the designated office, department, or bureau,
29 nor the legislative body, shall be liable if any estimate of future
30 voluntary contractual assessment liability is inaccurate, nor for
31 any failure of any seller to request notice pursuant to this chapter
32 or to provide the notice to a buyer.

33 (d) For purposes of enabling sellers of real property subject to
34 a voluntary contractual assessment to satisfy the notice
35 requirements of Section 1102.6b of the Civil Code, the legislative
36 body shall cause to be recorded in the office of the county recorder
37 for the county in which the real property is located, concurrently
38 with the instrument creating the voluntary contractual assessment,
39 a separate document that meets all of the following requirements:

1 (1) The title of the document shall be “Payment of Contractual
2 Assessment Required” in at least 14-point boldface type.

3 (2) The document shall include all of the following information:

4 (A) The names of all current owners of the real property subject
5 to the contractual assessment and the ~~assessor’s parcel number for~~
6 ~~the affected real property, or the legal description if there is no~~
7 ~~assessor’s parcel number.~~ *legal description and assessor’s parcel*
8 *number for the affected property.*

9 (B) The annual amount of the contractual assessment.

10 (C) The date or circumstances under which the contractual
11 assessment expires, or a statement that the assessment is perpetual.

12 (D) The purpose for which the funds from the contractual
13 assessment will be used.

14 (E) The entity to which funds from the contractual assessment
15 will be paid and specific contact information for that entity.

16 (F) The signature of the authorized representative of the
17 legislative body to which funds from the contractual assessment
18 will be paid.

19 (e) The recorder shall only be responsible for examining the
20 document required by subdivision (d) and determining that it
21 contains the information required by subparagraphs (A), (E), and
22 (F) of paragraph (2) of subdivision (d). The recorder shall index
23 the document under the names of the persons and entities identified
24 in subparagraphs (A) and (E) of paragraph (2) of subdivision (d).
25 The recorder shall not examine any other information contained
26 in the document required by subdivision (d).

27 (f) In order to reduce the costs associated with contractual
28 assessments, a legislative body may authorize the document
29 described in subdivision (d) to be combined with the notice
30 required by Section 5898.32, and recorded as a single document.

31 SEC. 5. Section 5898.28 of the Streets and Highways Code is
32 amended to read:

33 5898.28. (a) A public agency may issue bonds pursuant to this
34 chapter, the principal and interest for which would be repaid by
35 voluntary contractual assessments. A public agency may advance
36 its own funds to finance work to be repaid through voluntary
37 contractual assessments, and may from time to time sell bonds to
38 reimburse itself for those advances. A public agency may enter
39 into a relationship with an underwriter or financial institution that
40 would allow the sequential issuance of a series of bonds, each bond

1 being issued as the need arose to finance work to be repaid through
2 voluntary contractual assessments. The interest rate of each bond
3 may be determined by an appropriate index, but shall be fixed at
4 the time each bond is issued unless the bond is issued to finance
5 improvements to nonresidential private property or residential
6 private property with four or more units. Bond proceeds may be
7 used to establish a reserve fund for debt service or paying the costs
8 of foreclosure on properties participating in the program, to fund
9 capitalized interest for a period up to two years from the date of
10 issuance of the bonds, to fund the administrative fee required for
11 participation in the PACE Reserve Program established pursuant
12 to Chapter 4 (commencing with Section 26050) of Division 16 of
13 the Public Resources Code, and to pay for expenses incidental to
14 the issuance and sale of the bonds. Division 10 (commencing with
15 Section 8500) shall apply to any bonds issued pursuant to this
16 section, insofar as that division is not in conflict with this chapter.

17 (b) (1) Notwithstanding any provision of this division or the
18 Improvement Act of 1915 (Division 10 (commencing with Section
19 8500)), a public agency may transfer its right, title, and interest in
20 and to any voluntary contractual assessments, if bonds have not
21 been issued pursuant to subdivision (a). The public agency and
22 the transferee shall enter into an agreement that, among other
23 things, identifies the specific period of time during which the
24 transfer of voluntary contractual assessments will be operative,
25 not to exceed three years. Except as provided in paragraph (2), a
26 transfer of any voluntary contractual assessments under this
27 subdivision shall be treated as a true and absolute transfer of the
28 asset so transferred for the period of the transfer and not as a pledge
29 or grant of a security interest by the public agency for any
30 borrowing. The characterization of the transfer of any of those
31 assets as an absolute transfer by the public agency shall not be
32 negated or adversely affected by the fact that only a portion of any
33 voluntary contractual assessment is transferred, nor by any
34 characterization of the transferee for purposes of accounting,
35 taxation, or securities regulation, nor by any other factor
36 whatsoever. As used in this section, "transfer" means sale,
37 assignment, or other transfer.

38 (2) Nothing in this subdivision shall be construed to authorize
39 the transferee to initiate and prosecute a foreclosure action resulting
40 from a delinquency in the payment of the voluntary contractual

1 assessment. Initiation and prosecution of a foreclosure action shall
2 remain the responsibility of the public agency, which shall retain
3 the sole right to enforce its senior lien status.

4 (c) Division 10 (commencing with Section 8500) shall apply to
5 any bonds issued pursuant to this section, insofar as that division
6 is not in conflict with this chapter. Notwithstanding Part 16
7 (commencing with Section 8880) of Division 10, if any reserve
8 fund is established in whole or in part with legally available
9 moneys of one or more public agencies other than bond proceeds,
10 the public agency or agencies may provide that a property owner
11 who prepays all or a portion of the assessment shall not be credited
12 with the public agency moneys in the reserve fund and there shall
13 be no reduction in the assessment pursuant to Sections 8884 or
14 8881, and the public agency moneys in the reserve account shall
15 not be used to redeem bonds pursuant to Section 8885 and any
16 public agency moneys remaining in the reserve fund at the maturity
17 of the bonds shall be disbursed to the public agency free and clear
18 of the lien of the issuing instrument. Any excess bond proceeds
19 may be used to pay principal of and interest on the bonds in
20 addition to any other use permitted by Division 10 (commencing
21 with Section 8500).

22 (d) Notwithstanding any other law, the public agency may
23 conclude that it is in the public interest for bonds issued by the
24 public agency pursuant to this chapter to not be subject to
25 redemption prior to their scheduled maturity date except as a result
26 of the prepayment in whole or in part of contractual assessments.
27 Notwithstanding any other limitations set forth in law, and with
28 respect to bonds issued to finance improvements to nonresidential
29 property or residential property with four or more units, the
30 redemption premium associated with a redemption of bonds as a
31 result of a contractual assessment prepayment shall be determined
32 by agreement of the public agency issuing the bonds, the property
33 ~~owner~~ owner, and the initial purchaser of the bonds.

34 (e) (1) Without the prior written approval of the property owner,
35 and notwithstanding any other law, a public agency may issue
36 bonds pursuant to this chapter to refinance outstanding bonds
37 payable from contractual assessments levied pursuant to this
38 chapter if all of the following are true:

1 (A) The total interest cost to maturity on the refunding bonds
2 is less than the total interest cost to maturity on the bonds to be
3 refunded.

4 (B) The final maturity date of the refunding bonds is not later
5 than the final maturity date of the refunded bonds, except that if
6 the bonds to be refunded are variable rate bonds, the final maturity
7 date of the refunding bonds may extend to, but not beyond, the
8 useful life of the financed improvements.

9 (C) The total interest component of the scheduled contractual
10 assessment installments to maturity, after issuance of the refunding
11 bonds, is less than the total interest component of the scheduled
12 contractual assessment installments to maturity prior to issuance
13 of the refunding bonds.

14 (2) For purposes of this section, in connection with the issuance
15 of fixed rate bonds to refinance variable rate bonds, the interest
16 rate on the refunded bonds for purpose of demonstrating
17 compliance with this section may be assumed to be the maximum
18 possible interest rate on the bonds to be refunded as long as the
19 legislative body concludes that the public interest will be served
20 by issuing fixed rate bonds to refinance the outstanding variable
21 rate bonds. In connection with an issuance of refunding bonds
22 under this chapter, the legislative body may direct that an
23 amendment to the document required by subdivision (d) of Section
24 5898.24 be recorded to reflect the revised contractual assessment
25 installment schedule.

26 (f) With the prior written approval of the owner of nonresidential
27 property or residential property with four or more units, and
28 notwithstanding any other law, a public agency may issue bonds
29 pursuant to this chapter to refinance outstanding bonds payable
30 from contractual assessments levied pursuant to this chapter
31 without complying with subdivision (e). The final maturity date
32 of the refunding bonds issued pursuant to this subdivision may be
33 later than the final maturity date of the bonds being refunded as
34 long as the final maturity date of the refunding bonds does not
35 extend beyond the useful life of the financed improvements.

36 SEC. 6. Section 5898.30 of the Streets and Highways Code is
37 amended to read:

38 5898.30. Assessments levied pursuant to this chapter, and the
39 interest and any penalties thereon shall constitute a lien against
40 the lots and parcels of land on which they are made, until they are

1 paid. Division 10 (commencing with Section 8500), insofar as
2 those provisions are not in conflict with this chapter, Article 13
3 (commencing with Section 53930) of, and Article 13.5
4 (commencing with Section 53938) of, Chapter 4 of Part 1 of
5 Division 2 of Title 5 of the Government Code apply to the
6 imposition and collection of assessments contracted for pursuant
7 to this chapter, including, but not limited to, provisions related to
8 lien priority, the collection of assessments in the same manner and
9 at the same time as the general taxes of the city or county on real
10 property, unless another procedure has been authorized by the
11 legislative body or by statute, and any penalties and remedies in
12 the event of delinquency and default.

13 SEC. 7. Section 5898.33 is added to the Streets and Highways
14 Code, to read:

15 5898.33. (a) If a public agency owning property, including
16 property held in trust for any beneficiary, grants a leasehold or
17 other possessory interest in the property, the contractual assessment
18 may be levied on the leasehold or possessory interest and shall be
19 payable by the owner of the leasehold or possessory interest. The
20 assessment contract shall be entered into by the public agency that
21 established the program and the lessee, and the public agency
22 owning the property shall provide prior written consent to the
23 contractual assessment.

24 (b) At the time the assessment contract is executed, the term of
25 the leasehold interest shall be at least as long as the term of the
26 assessment contract.

27 (c) If the contractual assessment on any possessory interest
28 levied pursuant to subdivision (a) is unpaid when due, the tax
29 collector may use those collection procedures that are available
30 for the collection of assessments on the unsecured roll.

31 SEC. 8. Section 5899.2 of the Streets and Highways Code is
32 amended to read:

33 5899.2. For the purpose of financing the installation of
34 distributed generation renewable energy sources pursuant to this
35 chapter, "permanently fixed" includes, but is not limited to, systems
36 attached to a residential, commercial, industrial, agricultural, or
37 other real property pursuant to a power purchase agreement or
38 lease between the owner of the system and the owner of the
39 assessed property, if the power purchase agreement or lease
40 contains all of the following provisions:

1 (a) The attached system is an eligible renewable energy resource
2 pursuant to the California Renewables Portfolio Standard Program
3 (Article 16 (commencing with Section 399.11) of Chapter 2.3 of
4 Part 1 of Division 1 of the Public Utilities Code).

5 (b) The term of the power purchase agreement or lease is at
6 least as long as the term of the related assessment contract.

7 (c) The owner of the attached system agrees to install, maintain,
8 and monitor the system for the entire term of the power purchase
9 agreement or lease.

10 (d) The owner of the attached system is not permitted to remove
11 the system prior to completion of the term of the contractual
12 assessment lien.

13 (e) After installation, the power purchase agreement or lease is
14 paid, either partially or in full, using the funds from the contractual
15 assessment program.

16 (f) The right to receive the electricity from the system, through
17 a power purchase agreement or lease or the right to the system
18 itself, is tied to the ownership of the assessed real property and is
19 required to be automatically transferred with the title to the real
20 property whether the title is transferred by voluntary sale, judicial
21 or nonjudicial foreclosure, or by any other means.

22 (g) The power purchase agreement or lease identifies the public
23 agency that is a party to the assessment contract on the real property
24 as a third-party beneficiary of the power purchase agreement or
25 lease until the assessment lien on the property has been fully paid
26 and, only until that time, prohibits amendments to the power
27 purchase agreement or lease without the consent of the public
28 agency.

29 (h) In order to ensure that the property owner is guaranteed the
30 electric power from the system for the length of the lien, the system
31 shall not be removed if the owner of the attached system is not
32 performing its obligations under the contract, and one of the
33 following is true:

34 (1) The owner of the attached system does both of the following:

35 (A) Covenants in its contract with the property owner that
36 neither the owner of the attached system nor any successor in
37 interest will remove or permanently decommission the attached
38 system during the term of the contract.

39 (B) Warrants in the contract with the property owner that no
40 assignee, creditor, partner, or owner of the attached system's owner

- 1 has, as of the date of the contract or during the remaining term of
2 the contract, the right to remove or permanently decommission
3 the attached system.
- 4 (2) The owner of the attached system must be a bankruptcy
5 remote special purpose entity that is bankruptcy remote and meets
6 all of the following conditions:
- 7 (A) It does not engage in any business other than owning the
8 attached systems and entering into electricity contracts with the
9 homeowner.
- 10 (B) It has no material debt.
- 11 (C) Its contracts are either entered into with unrelated third
12 parties or have terms negotiated at arms length.